

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHNNY N. TALBERT,

Plaintiff,

v.

SCOTT SPEER,

Defendant.

CASE NO. 3:25-cv-05099-DGE-GJL

ORDER DENYING PETITIONER'S  
MOTION FOR RELIEF FROM  
JUDGMENT (DKT. NO. 15) AND  
DENYING CERTIFICATE OF  
APPEALABILITY

Before the Court is Petitioner Johnny N. Talbert's Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(4). (Dkt. No. 15.)

On May 27, 2025, the Court adopted the Honorable Grady J. Leupold, United States Magistrate Judge's Report and Recommendation ("R&R") and dismissed Petitioner's federal habeas petition without prejudice. (Dkt. No. 13.) Petitioner asks the Court to re-open habeas proceedings and requests a certificate of appealability. (Dkt. No. 15 at 2.)

Petitioner argues the Court "violated the Magistrate's Act and Habeas Rule 8(I) by failing to acquire consent of a magistrate to enter a decision on a final judgment." (*Id.* at 1.) It appears


1 the basis for Petitioner's argument is that Judge Leupold entered an order granting Petitioner's  
2 motion to proceed in forma pauperis. (*Id.*) Petitioner string cites a host of regulations, statutes,  
3 and cases, but offers no explanation for how these citations support his argument. (*See id.*)  
4 Further, Petitioner does not address the authority under which his motion is made: Federal Rule  
5 of Civil Procedure 60(b)(4), providing the court may relieve a party from a final judgment  
6 because the judgment is void. Fed. R. Civ. Pro. 60(b)(4). In sum, Petitioner provides no factual  
7 or legal support to warrant re-opening the proceedings on the requested bases.

8 The Court's judgment is not void, and Petitioner is not entitled to a Certificate of  
9 Appealability, because his habeas petition was invoked under the incorrect provision and did not  
10 provide sufficient information to screen his Petition for timeliness and exhaustion of state court  
11 remedies. (Dkt. No. 13 at 1.) Accordingly, the Court DENIES Petitioner's Motion for Relief  
12 from Judgment. (Dkt. No. 15.)

13 Further, the Court DENIES Petitioner's request for a certificate of appealability as  
14 Petitioner has not established any debatable issue related to the petition he filed.

15 Dated this 2nd day of July, 2025.

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David G. Estudillo  
United States District Judge